



The Hayes Law Firm, P.C.
Attorneys at Law

January 8, 2016

Via Electronic Filing:

Honorable Charles R. Breyer
United States District Judge
Courtroom 6, 7th Floor
450 Golden Gate Avenue
San Francisco, CA 94102

Re: Application for Leadership in *In re Volkswagen “Clean Diesel” Marketing, Sales Practices and Products Liability Litigation*, 15-MD- 2672 CRB (JSC)

Dear Judge Breyer:

I am requesting a position on the Plaintiff’s Steering Committee (“PSC”) representing vehicle owners.¹ I have prior PSC experience and 30 years of diverse experience with a national scope. More importantly, what makes me unique is 18+ years of experience litigating and successfully resolving cases seeking automobile diminished value damages (“DV”) on behalf of vehicle owners/insureds. I believe I can be very effective on the PSC, especially with regard to the loss of value damages at issue in this matter.

I own The Hayes Law Firm, P.C. in Houston, Texas and I concentrate my practice on Class Actions and complex Consumer and Commercial Litigation. I have two seasoned attorneys (35+ years and 10+ years) who work for me.² I typically work collaboratively and successfully with other plaintiff law firms in my cases.³ I am qualified for this position based on my DV experience and my MDL and Class Counsel experience.

Together with Mr. Nealey and Mr. Hansen, I filed *Sims v. Volkswagen Group of America*, No. 3:15-cv-05692- RBL (W.D. Wa. 11/30/15). Judge Ronald Leighton appointed me, Mr. Nealey and a third lawyer as interim class counsel prior to the transfer to your court.

In 1997, I started filing automobile DV class action cases against insurance companies seeking recovery for the diminished value of the automobile that remained after the car was

¹Scott P. Nealey is also applying for a position for the PSC. Together, we are only requesting one position, but are both applying for it, leaving it up to the Court to decide which of us could better serve. In the alternative, I would ask to serve on any damages committee or class certification committee that is formed.

² I also work in conjunction with and share resources with two law firms on all DV and other cases, The Nealey Law Firm (San Francisco) and The Law Offices of Stephen M. Hansen (Tacoma, WA), which provides me access to three additional attorneys.

³ Of the firms who have filed cases herein, I have worked with the following Plaintiff’s firms on other cases evidencing my ability to work well with other counsel: The Hausfeld Firm; Leif Cabraser; Cohen Milstein; Seeger Weiss; Bonnett Fairbourn; Sommers Schwartz; Paul Rothstein and Associates; Whitfield, Bryson and Mason; Reich and Binstock; Berman DeValerio; Cuneo, Gilbert & Laduca; Weitz Luxembourg; Zimmerman Reed; Beasley Allen; Motley Rice; The Federman Law Firm.

repaired to industry standards. This concept caught on nationwide and I was invited to join a nationwide group of prominent Plaintiff's law firms collectively called the "IFLG" to pursue the cases on a nationwide basis. Since that time and even today, I continue to pursue these cases successfully with Scott Nealey and Stephen Hansen.

As part of my DV work, Dr. Bernie Siskin⁴ was retained to prepare the class-wide DV damage model. We gathered auction data from all over the nation, and Dr. Siskin conducted a regression analysis to calculate the DV. The DV damages model prepared by Dr. Siskin has been upheld by the Washington State Supreme Court and a Washington Federal Court. I have been involved in successfully resolving nine DV cases,⁵ both nationwide and statewide (two are pending final resolution), totaling more than \$150 million dollars.

Dr. Siskin's DV work will be important to the VW litigation because, as the Court has noted, possibly one of the most valuable assets owned by the putative class members now has questionable value. Dr. Siskin, who I have retained⁶ to be an expert in this matter, has proven the ability to calculate effectively and efficiently class-wide automobile DV and to separate other damages such as "stigma" loss. In some states, stigma damages are not compensable and thus, it is anticipated this will be an issue in the case at bar. Judicial references on these DV matters include: federal Judges R. Leighton and R. Bryan; state court Judges V. Hogan, B. Chuschcoff and R. Culpepper.⁷

My MDL experience includes an appointment to a five person PSC in the *In Re Blue Cross Blue Shield* anti-trust litigation (MDL 2406) alleging BCBS has engaged in anti-competitive conduct which has damaged the Plaintiffs. Although I applied for a position as chair of committee, Judge R. Proctor (205-278-1980) unilaterally appointed me to the PSC on which I have served on since 2013. I was also named Class Counsel in MDL 1334, *In Re Managed Healthcare*, on behalf of the healthcare providers by Judge F. Moreno (305-523-5110). See, *Ashton v. Humana* and *Kathy Tisco, P.T. v. CIGNA Cor.*

My products liability experience includes a federal Class Action in the Middle District of California against Yamaha for defective boat engine owners. *Williams v. Yamaha*, No. 2:13-CV-05066 (CD Cal. 2013). I was appointed Interim Co-Lead Class Counsel in this case in January 2014. I took the lead on locating ex-Yamaha employees who attested to Yamaha's knowledge of the defective engines and other misconduct by Yamaha with regard to these boat engines. The case is currently on appeal to the 9th Circuit. I recently also filed a California only state class action against Yamaha seeking redress for the defective boat engines which fail due to corrosion. *Wilkerson v. Yamaha*, No. 37-2015-0003550 (Sup. Ct, San Diego Cty., 2015). Also, as an associate, I was heavily involved for four years in the *Spencer v Shell Oil Co.* case, No. CV 94-074 (Greene Cty., Ala., 1997), which involved faulty plumbing in houses throughout the Sunbelt. My firm, Fleming, Hovenkamp and Grayson, was Class Counsel on this, the largest property damage settlement class in the nation. Over six million homeowners were provided the opportunity to replace their leaky plumbing systems in this settlement valued between \$750 million and 1.5 billion dollars.

⁴ See resume available at <http://www.bldslc.com/dr-siskin>.

⁵ Evidencing my ability to successfully resolve matters with Defense Counsel.

⁶ In conjunction with The Nealey Law Firm and the Law Offices of Stephen M. Hansen.

⁷ Contact numbers are, respectively: (253-882-3840); (253-882-3870); (253-798-7566); (253-798-7574); (253-798-6640).

As the Court knows, it is important to have diversity on the PSC, and I offer that for all the reasons set forth above. I am prepared to immediately commit to this time consuming litigation. Having recently obtained \$74,000,000 in settlements from various auto insurers for the failure to pay diminished value on automobile claims and having an established line of credit, I am more than capable of making the significant funding contributions that may be necessary for a PSC spot.

Sincerely,

THE HAYES LAW FIRM, PC

A handwritten signature in black ink, appearing to read "Debra B Hayes", written in a cursive style.

Debra Brewer Hayes